



3-10-03

DAC
\$
#14

PATENT DOCKET 204,482

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: SAXENA ET AL. EXAMINER: KENT BELL
SERIAL NO.: 09/539,992 ART UNIT.: 1661
FILED: March 30, 2000
TITLE: A NEW AND DISTINCT SOMACLONAL
VARIETY OF ROSE SCENTED
GERANIUM "PARIMAL"

DATE: February 28, 2003

PETITION TO WITHDRAW HOLDING OF ABANDONMENT
AND TO WAIVE REQUIREMENT FOR FILING A PETITION TO REVIVE
AN UNINTENTIONALLY ABANDONED APPLICATION AND TO CREDIT
THE \$1,300 REVIVAL FEE

Assistant Commissioner
for Patents
Washington, D.C. 20231
Attention: OFFICE OF PETITIONS

STATEMENT OF FILING BY EXPRESS MAIL 37 C.F.R. § 1.10

This correspondence is being deposited with the United States Postal Service on
March 6, 2003 in an envelope as "Express Mail Post Office to Addressee" Mailing Label
Number ET 537 521 215 US addressed to the Honorable Commissioner for Patents,
Washington, D.C. 20231.

03/13/2003 AWONDAF1 00000010 010035 09539992

01 FC:1460 130.00 CH

RECEIVED

MAR 13 2003

OFFICE OF PETITIONS

REMARKS

In response to the September 28, 2001 Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures, Applicants *timely* submitted on October 25, 2001 a Computer Readable Form (CRF) and a paper copy of the Sequence Listing as required by the Notice. The Computer Readable Form had been checked by our Indian associates and by ourselves prior to submission and was found to be in good order.

Notwithstanding our submission of February 12, 2002 of a CRF which was in good order, we received another Notice to Comply with the Sequence Rules, and it was stated in the Notice that the CRF was "**unreadable**".

Thereafter, the undersigned wrote to our Indian associates on February 25, 2002, copy enclosed, and asked them to provide another CRF which would be readable. Due to delays encountered by the client, which is related in their letter of March 12, 2002, copy enclosed, they could not send us a replacement CRF until April 17, 2002, (see the attached letter).

When the undersigned forwarded the replacement CRF on April 23, 2002, Applicants inadvertently failed to submit the two (2) month extension fee, and due to a clerical error, we did not indicate that the amount due should be charged to our Deposit Account No. 01-0035, as is our usual practice. (When the disk was filed *initially* in the PTO on October 25, 2001, we noted that "any charges which may be due should be charged to our Deposit Account No. 01-0035". When Applicants responded to the Notice of Missing Parts, submitting a proper Declaration/Power of Attorney on July 6, 2000, they also indicated that "any other fees due should be charged to Deposit Account No. 01-0035. Therefore, the failure to

request that the deposit account be charged for further fees on April 23, 2002 was obviously an *inadvertence*.)

It is respectfully submitted that Applicants' inadvertence in omitting an instruction to charge the patent deposit account should be waived in the present circumstances since the damage to the CRF *when first submitted* on October 25, 2001, which made it "unreadable" resulted from the PTO's having irradiated the disk upon its receipt in the mailroom. The irradiation rendered the disk "unreadable", i.e., when the USPTO Nucleotide Technical Department pulled up the file on their screen, the following message appeared "Error Reading Drive A". That message appears once a disk has been damaged, and the contents on the disk cannot be pulled up on screen. (See the attachment we enclose with a copy of the message received from the Technical Department at the PTO showing "Error Reading Drive A" (which is the drive that reads the disks we submit.) Had the disk not been irradiated, it would have been found "readable", and the PTO would not have had to send the **second** Notice to Comply.

Thus, *but for* the actions of the Patent Office in irradiating the initially submitted disk resulting in damage thereto, the necessity for filing a second disk would never have arisen, and Applicants' inadvertence in omitting the two-month extension fee would not have occurred.


Due to the foregoing circumstances, it is respectfully requested that the Commissioner waive the requirement that a two-month extension fee was due upon the submission of the April 23, 2002 response and that the CRF submitted on that date should be treated as having been submitted *nunc pro tunc* on October 25, 2001.

Applicants respectfully pray that the application be restored to pendency, the abandonment be rescinded, and that the \$1,300 Petition Fee to Revive the application for Unintentional Abandonment submitted on February 25, 2003 be credited to Deposit Account No. 01-0035.

Please charge the \$130.00 Petition Fee to Deposit Account No. 01-0035.

If any other or further fees are due in connection with this Petition, please charge same to our Deposit Account No. 01-0035.

Respectfully submitted,


JAY S. CINAMON
Attorney for Applicants
Reg. No. 24,156

ABELMAN FRAYNE & SCHWAB
150 East 42nd Street
New York, New York 10017-5612
Tel. (212) 949-9022
Fax (212) 949-9190

kumaran&\22803sax.pet

RECEIVED

MAR 13 2003

OFFICE OF PETITIONS



Lawrence E. Abelman
Jeffrey A. Schwab
Victor M. Tannenbaum
Peter J. Lynfield
Alan J. Hartnick
Caridad Piteiro Scordato
Michael Aschen
Julianne Abelman
Jonathan W. Gumpert
Marsha G. Ajhar

Of Counsel:
Norman S. Beier
Stewart J. Fried
Alan D. Gilliland
Thomas E. Spath
Robert C. Osterberg
Howard R. Jaeger

Gabriel M. Frayne (1929 - 2000)

ABELMAN, FRAYNE & SCHWAB

Attorneys at Law

150 East 42nd Street
New York, NY 10017-5612

Telephone: (212) 949-9022

Facsimile: (212) 949-9190

Cable: LAWABEL New York

Telex: 661108 and 276592

Internet: e-mail@lawabel.com

Jay S. Cinamon
Julie B. Seyler
Marie Anne Mastrovito
Michael I. Markowitz*
Anthony J. DiFilippi
Warren L. Zeserman**
Lance R. Griffin
Wayne J. Gu***
Anthony A. Coppola
Michael J. Schwab
Jeanine M. Mitchell
Marcella Ballard
Jennifer R. Waitman
Lori B. Cohen
Laura J. Winston

Dennis A. Mason
U.S. Patent Agent

*Member PA Bar Only
**Member NJ Bar Only
***Member MD Bar Only

February 25, 2002

VIA FACSIMILE (011 91 11 65 33 889)

CONFIRMATION BY MAIL

Mr. D.C. Gabriel

Kumaran & Sagar

84C, C-6 Lane (off Central Avenue)

Sainik Farms

New Delhi 110 062

INDIA

Re: SAXENA ET AL.
USSN: 09/539,992
Filed: March 30, 2000
FOR: A NEW AND DISTINCT
SOMACLONAL VARIETY
OF ROSE SCENTED
GERANIUM "PARIMAL"

Your Ref.: 0342 NF 66/2000

Our Ref.: 204,482

RECEIVED

MAR 13 2003

OFFICE OF PETITIONS

Dear Mr. Gabriel:

Enclosed is an Office Action of February 12, 2002 which requires a response by March 12, 2002. The term for responding can be extended for one, two, three, four, or five months upon payment of the appropriate large entity extension fee.

The Office requires that nucleotide sequence and/or amino acid sequence be in computer readable form as well as an initial or substitute paper copy of the sequence listing. Finally, a statement that the content of the paper and the computer readable copies are the same and, if

Kumaran & Sagar
February 25, 2002
Page -2-

ABELMAN, FRAYNE & SCHWAB

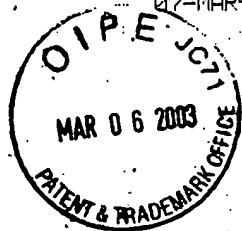
applicable, that no new matter is included. We will provide the statement provided that you assure us that the foregoing is in fact the case.

Sincerely,

Jay S. Cinamon

JSC:bk
Enclosure

kumaran&\22502sax.ltr



TRADE MARK AND PATENT ATTORNEYS

2
RECEIVED

MAR - 7 2002

ABELMAN, FRAYNE & SCHWAB

March 07, 2002

Jay S. Cinnamon,
ABELMAN, FRAYNE & SCHWAB,
150 East 42nd Street,
New York, N.Y. 10017-5612
U.S.A.

Deadline- March 12, 2002

FAX: 001-212-949-9190

RE: U.S. Patent Application No. 09/539992

Title: A new and distinct somaclonal variety of rose scented geranium "Parimal"

Your Ref: 204,482

Our Ref: 345 NF 66/2000

Dear Mr. Cinnamon,

We thank you for your fax of February 25, 2002 for an Office Action of February 12, 2002 for above referred patent Application.

Due to some technical problem in our machines we are not able to prepare the fresh Sequence Listing and thus would not be able to meet the deadline of March 12, 2002.

If you are able prepare the same at your end and can meet the said deadline then we request you to kindly do the needful. Otherwise we will go for one-month extension and will prepare the same at our end. Kindly confirm the status by return facsimile.

Also we would like to draw your kind attention to an error in your said letter as regards our file reference number. Actually it is 345 NF 66/2000 and not 342 NF 66/2000 as mentioned in your letter. We request you to kindly do the needful.

We are looking forward to hearing from you soon.

With sincere regards,

[Signature]
D.C. Gabriel

RECEIPT ACKNOWLEDGED

March 7, 2002

Dear Mr. Gabriel.

We think it best that we await the receipt of the Sequence Listing from your office.

Regards,
[Signature]
Jay Cinnamon



3

April 17, 2002

Mr. Jay S. Cinamon,
ABELMAN, FRAYNE & SCHWAB,
150 East 42nd Street,
New York, N.Y. 10017-5612
U.S.A.

FAX: 001-212-949-9190

RE: U.S. Patent Application No. 09/539992
Title: A new and distinct somaclonal variety of rose scented geranium "Parimal"
Your Ref: 204,482
Our Ref: 345 NF 66/2000

Dear Mr. Cinamon,


We thank you for your fax of February 25, 2002 for an Office Action of February 12, 2002 for above referred Patent Application.

Please find enclosed a Disk containing a file pertaining to Sequence Listing. Also, please find enclosed a paper Copy of the Sequence Listing. Further, kindly file a statement stating that the contents of the paper and CRF copies are the same, and include no new matter.

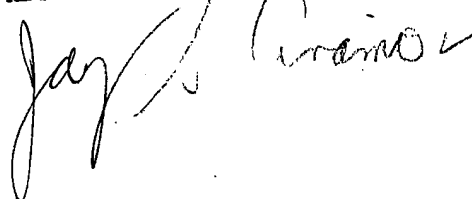
Kindly file the response and also confirm the same at your earliest convenience.

Please feel free to contact us in case of any further query.

With sincere regards,


for D.C. Gabriel
Encl: as stated above

4-22-02
RECEIPT ACKNOWLEDGED



MAR 06 2003

SAXENA

4

19/539,992/A

App

C:\WINDOWS>A:

A:\>DIR

Volume in drive A has no label
Directory of A:\

CSIR1	APP	4,298	10-20-01	4:45p	CSIR1.APP
	1 file(s)		4,298 bytes		
	0 dir(s)		1,453,056 bytes free		

A:\>TYPE CSIR1.APP|MORE

Read fault error reading drive A
Abort, Retry, Fail?F
Fail on INT 24 - CSIR1.APP

A:\>

↳ Onscreen message when STIC PC
tried to read submitted file